

Before The  
*Federal Communications Commission*  
Washington, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

In re Applications of )

LRB BROADCASTING )

DAVID L. WOLFE )

For a Construction Permit For a )  
New FM Station on Channel 288A )  
in Brockport, New York )

File No. BPH-901218MI

File No. BPH-901219MI

MM Docket No. 92-61 ✓

**ORIGINAL  
FILE**

To: The Honorable Richard L. Sippel  
Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Pursuant to Section 73.3525 of the Commission's rules, David L. Wolfe ("Wolfe") and LRB Broadcasting ("LRB"), through their respective counsel, jointly request approval of the attached Settlement Agreement, dismissal of the application of LRB, and grant of the application of Wolfe.

1. Status of the Proceeding. The above-referenced mutually exclusive applications have been designated for hearing. See, the Hearing Designation Order, MM Docket No. 92-61, released April 13, 1992. Both parties have timely tendered the hearing fee as required by Commission rules. They have now agreed to a settlement of the comparative hearing, which will completely resolve the hearing proceeding. The instant Joint Request transmits the Settlement Agreement to the Presiding Judge, for approval.

No. of Copies rec'd  
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2. Description of Agreement. The Settlement Agreement provides that LRB Broadcasting will dismiss its application in exchange for the consideration according to the terms of that Agreement. Payment will be made by Wolfe when grant of his application becomes "Final". The term "Final" is defined as when the application of LRB is dismissed and Wolfe has been found to be qualified for a grant. The Settlement Agreement includes specific declarations showing (a) the reasons why the settlement is in the public interest; and (b) that neither of the applications were filed for the purpose of reaching or carrying out the Settlement Agreement.

WHEREFORE, in consideration of the above, it is respectfully requested that (a) this "Joint Request" and the attached Settlement Agreement be approved; and (b) the application of LRB Broadcasting (BPH-901218MI) be dismissed with prejudice; and (c) the application of David L. Wolfe (BPH-901219MI) for a new FM broadcast station at Brockport, New York be granted.

Respectfully submitted,

LRB BROADCASTING

By: 

Arthur Belendiuk, Esq.  
Its Attorney  
Smithwick & Belendiuk, P.C.  
1990 M Street, NW, Suite 510  
Washington, D.C. 20036

DAVID L. WOLFE

By: \_\_\_\_\_

J. Richard Carr, Esq.  
His Attorney  
P.O. Box 70725  
Chevy Chase, MD 20813-0725

July 27, 1992

2. Description of Agreement. The Settlement Agreement provides that LRB Broadcasting will dismiss its application in exchange for the consideration according to the terms of that Agreement. Payment will be made by Wolfe when grant of his application becomes "Final". The term "Final" is defined as when the application of LRB is dismissed and Wolfe has been found to be qualified for a grant. The Settlement Agreement includes specific declarations showing (a) the reasons why the settlement is in the public interest; and (b) that neither of the applications were filed for the purpose of reaching or carrying out the Settlement Agreement.

WHEREFORE, in consideration of the above, it is respectfully requested that (a) this "Joint Request" and the attached Settlement Agreement be approved; and (b) the application of LRB Broadcasting (BPH-901218MI) be dismissed with prejudice; and (c) the application of David L. Wolfe (BPH-901219MI) for a new FM broadcast station at Brockport, New York be granted.

Respectfully submitted,

LRB BROADCASTING

By: \_\_\_\_\_

Arthur Belendiuk, Esq.  
Its Attorney  
Smithwick & Belendiuk, P.C.  
1990 M Street, NW, Suite 510  
Washington, D.C. 20036

DAVID L. WOLFE

By:  \_\_\_\_\_

J. Richard Carr, Esq.  
His Attorney  
P.O. Box 70725  
Chevy Chase, MD 20813-0725

July 27, 1992

## *Settlement Agreement*

This Settlement Agreement ("Agreement") is entered into this 27<sup>th</sup> day of July, 1992 by and between David Wolfe ("Wolfe") and LRB Broadcasting, Limited Partnership ("LRB").

Zenitram Communications, Inc., George W. Kimble, and Philip Y. Hahn are not parties to this Settlement Agreement. The application of George W. Kimble was dismissed for failure to submit the required hearing fee. That application was dismissed on August 29, 1991. The application of Philip Y. Hahn was dismissed by the Hearing Designation Order (MM Docket No. 92-61) as violative of Section 2.2 of the Canadian-USA FM Broadcasting Agreement of 1947. The application of Zenitram Communications, Inc. was dismissed by the Presiding Judge for failure to prosecute.

Wolfe and LRB are the remaining applicants before the Federal Communications Commission for a new FM station construction permit on Channel 288A at Brockport, New York.

Wolfe is an individual applicant. LRB is a New York Limited Partnership chartered at Nassau, New York. LRB warrants that it has the requisite authority to enter into and be bound by this Agreement and, where necessary, the appropriate resolutions have been executed.

Wolfe and LRB have been designated for Comparative Hearing before the Federal Communications Commission. In Order to avoid the costs of a protracted hearing, the parties have agreed that the application of "Wolfe" should be granted. LRB has agreed to dismiss its application in return for monetary consideration equal to its expenses in an amount not to exceed \$25,000. Accordingly, Wolfe shall reimburse LRB for its expenses, as permitted by the rules and regulations of the Federal Communications Commission, outlined in attached Exhibit 1.

Accordingly, the parties wish to reduce the terms of their understanding to writing.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, it is agreed as follows:

1. Joint Request for Commission Approval. Prior to July 27, 1992, Wolfe and LRB shall execute, and Wolfe will file with the Commission a "Joint Request" seeking (1) approval of this Agreement, (2) dismissal of the applications of LRB, and (3) grant of the application of Wolfe. With the "Joint Request" there shall also be filed (A) this Agreement; and (B) Declarations of Wolfe and LRB setting forth the reasons why this Agreement is in the public interest and stating that neither application was filed for the purpose of reaching or carrying out such an Agreement.

2. Dismissal of Application. Subject to the approval of this Agreement by the Commission, and subject to certain other conditions as set forth here and below, LRB agrees to request dismissal of its application, with prejudice, for a construction permit for a new FM station at Brockport, New York.

3. Consideration to LRB. Within ten (10) business days after the "Order" dismissing the applications of LRB and granting the application of Wolfe has become "Final", Wolfe shall pay to LRB, by certified or bank check and made payable to Smithwick & Belendiuk, P.C. Escrow Account, the sum indicated in Exhibit 1. This payment is, however, subject to certain conditions as set forth below.

4. Payment of Consideration. It is understood and agreed by the parties hereto that the parties hereto that the conditions precedent to the effectiveness of this Agreement are the

grant of Wolfe's application and the dismissal of the application of LRB. If those conditions cannot be satisfied (subject to Paragraph 4A, below), this Agreement shall be null and void and the parties shall return to their original positions as if no Settlement Agreement had been executed.

Furthermore, subject to Paragraph 4A, below, the action of the Presiding Judge approving the settlement must have become "Final". The term "Final" is defined as: the application of LRB is dismissed and Wolfe has been found qualified for a grant by the Administrative Law Judge.

4A). The application of Zenitram was dismissed by the Presiding Judge. Zenitram has filed an appeal to the Review Board of the Presiding Judge's dismissal and the appeal has been opposed. Should the application of Zenitram be reinstated by the FCC, Wolfe fully understands that it may become necessary for him to participate in a Comparative Hearing against Zenitram and that the costs associated with such a hearing, as far as Wolfe's participation is concerned, shall be paid by Wolfe. Wolfe further understands that the issuance of any construction permit to him may be contingent upon the final disposition of any request for administrative and/or judicial review Zenitram may seek. Wolfe assumes the risk of Zenitram's continued, potential participation in this proceeding.

If the approval of the Settlement Agreement becomes "Final", then the Escrow Agents shall pay to LRB the appropriate amount specified in Exhibit 1, with all interest paid to Wolfe, within ten (10) days of "Finality" of the dismissal of the LRB application provided:

1. The dismissal of the LRB application has become  
"Final" and is deemed to be "with prejudice."

2. The Wolfe application is grantable in all other respects except for any request for review filed by Zenitram.

4B). J. Richard Carr, counsel to Wolfe, and Arthur Belendiuk, counsel to LRB, shall act as "Joint Escrow Agents" and the duties of the Escrow Agents shall be governed by the Escrow Agreement, attached hereto as Exhibit No. 3.

5. Availability of Consideration. Wolfe, upon execution of this settlement Agreement, shall provide sufficient documentary evidence to LRB that Wolfe has placed in escrow with Crestar Bank, Washington, D.C., all of the funds described in Exhibit No. 1. Once placed in escrow, said funds shall be subject to the Escrow Agreement.

6. Obligation to Cooperate and Prosecute Diligently. Subject to the provisions of Paragraphs 1 and 4, hereof, Wolfe and LRB further agree to cooperate and use their best efforts to prepare, file promptly and prosecute diligently the "Joint Request for Approval of Settlement Agreement," including providing to each other or the Commission any additional information that may reasonably be requested. Neither Wolfe nor LRB shall take any action that would interfere with or delay the receipt of approval of the settlement agreement.

7. Commission Approval. This Settlement Agreement has been entered into subject to the approval of the Federal Communications Commission. Should the Commission refuse to approve this Agreement, the parties hereby agree that, subject to Paragraph 4 and 4A, they will immediately make good faith efforts to resolve each Commission objection in order to obtain Commission approval. If Commission approval has not become "Final" (as defined in

Paragraphs 4 and 4A) within three (3) months of the date of filing of the "Joint Request for Approval", then either party may, upon written notice to the other, terminate this Agreement and be relieved of its obligations hereunder.

8. Notice. All notices, demands, payment and requests required or permitted by this Agreement shall be deemed to have been made when received by the parties specified below:

TO: David Wolfe  
7820 Sandy Shore Drive  
Hamlin, New York 14464

WITH A COPY TO: J. Richard Carr, Esq.  
P.O. Box 70725  
Chevy Chase, MD 20813-0725

TO: Robert J. Barrera  
LRB Broadcasting, Limited Partnership  
7 Irving Street  
Baldwin, New York 11510

WITH A COPY TO: Arthur Belendiuk, Esq.  
Smithwick & Belendiuk, P.C.  
1990 M Street, Suite 510  
Washington, DC 20036

9. Failure of any party to complain of any act or omission on the part of any other party in breach of this Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver or any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.



10. Entire Agreement. This Agreement is the only agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof.

11. Counterparts. This Agreement may be signed in counterpart with the same effect as if the signatures to each were on the same Agreement.

12. Assignment of Rights. The rights and obligations of the parties hereto set forth in this Agreement shall be binding upon and inure to the benefit of all the parties hereto, their heirs, legal representatives, successors, transferees and assigns.

13. Governing Law. The terms of the Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement on the date(s) specified below.

WITNESS:

DAVID L. WOLFE

Debra L. Bull

By: David L. Wolfe

Date: 7/27/92

WITNESS:

LRB BROADCASTING, Limited

Partnership

\_\_\_\_\_

By: \_\_\_\_\_  
Robert J. Barrera, General Partner

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Linda R. Barrera, General Partner

10. Entire Agreement. This Agreement is the only agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof.

11. Counterparts. This Agreement may be signed in counterpart with the same effect as if the signatures to each were on the same Agreement.

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13. Governing Law. The terms of the Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement on the date(s) specified below.

WITNESS:

DAVID L. WOLFE

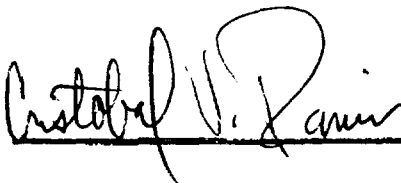
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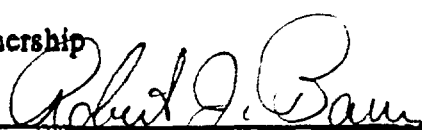
By: \_\_\_\_\_

WITNESS:

LRB BROADCASTING, Limited

Partnership

  
\_\_\_\_\_  
Date: 7-24-92

By:   
Robert J. Barrera, General Partner

By:   
Linda R. Barrera, General Partner

**DECLARATION OF LRB BROADCASTING, LIMITED PARTNERSHIP**

**We, Robert J. Barrera and Linda Barrera, hereby declare:**

1. We have entered into a Settlement Agreement with David L. Wolfe to remove a conflict between applications pending before the Federal Communications Commission in MM Docket No. 92-61. Under the terms of the Settlement Agreement, We have agreed to dismiss the application of LRB Broadcasting, Limited Partnership. We warrant that we have full authority to dismiss the application of LRB Broadcasting, Limited Partnership.

2. The application of LRB Broadcasting was not filed for the purpose of reaching or carrying out any settlement agreement.

3. This Settlement Agreement will be in the public interest because it will expedite this proceeding, conserve the FCC's resources, and allow the prompt construction of the station and initiation of a new radio service in Brockport, New York.

4. Other than the consideration set forth in the Settlement Agreement, filed simultaneously herewith, LRB Broadcasting, Limited Partnership has not promised, paid, been promised, or received any other consideration for the dismissal of its application.

**We declare under penalty of perjury that the foregoing is true and correct.**

By: Robert J. Barrera

**Robert J. Barrera**

By: Linda R. Barrera

**Linda Barrera**

Date 7-24-92

DECLARATION OF DAVID L. WOLFE

I, David L. Wolfe, hereby declare:

1. I have entered into a Settlement Agreement with LRB Broadcasting, Limited Partnership to remove a conflict between applications pending before the Federal Communications Commission in MM Docket No. 92-61. Under the terms of the Settlement Agreement, LRB has agreed to dismiss its application in return for payment of expenses.

2. The application of David L. Wolfe was not filed for the purpose of reaching or carrying out any settlement agreement.

3. This Settlement Agreement will be in the public interest because it will expedite this proceeding, conserve the FCC's resources, and allow the prompt construction of the station and initiation of a new radio service in Brockport, New York.

4. Other than the consideration set forth in the Settlement Agreement, filed simultaneously herewith, David L. Wolfe has not promised, or paid, any other consideration for the dismissal of the LRB application.

I declare under penalty of perjury that the foregoing is true and correct.

By: David L. Wolfe

David L. Wolfe

Date: 7-25-92

## ESCROW AGREEMENT

This Escrow Agreement is made and entered into this 27<sup>th</sup> day of July, 1992 by and between David Wolfe ("Wolfe") and LRB Broadcasting, Limited Partnership ("LRB"), (collectively as "The Parties" or "Parties") and J. Richard Carr, Esq. and Arthur Belendiuk, Esq. (Jointly "Escrow Agents").

### WITNESSETH:

WHEREAS, The Parties have entered into a Settlement Agreement providing for the dismissal, with prejudice, of LRB's application before the Federal Communications Commission for a new FM broadcast station at Brockport, New York, in exchange for consideration to be paid by Wolfe (the "Settlement Agreement") and

WHEREAS, Wolfe is required under the Settlement Agreement to deposit the sum described in Exhibit 1, of the Settlement Agreement, into an escrow account.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties agree as follows:

1. Within ten (10) days of the signing hereof, Wolfe will deposit the required sum (the "Escrowed Funds") with the Escrow Agents. The Escrow Agents shall establish an escrow account ("Escrow Account") at the Crestar Bank, Washington, D.C. ("Bank"). The Escrowed Funds will be invested at the Bank in a federally insured account.

2. All interest accrued upon the Escrowed Funds shall be the property of Wolfe. The Escrow Agents shall pay interest earned on the Escrowed Funds to Wolfe at the termination of the Escrow.

3. The Escrow Account shall require the signature of both Escrow Agents before any action can be taken with respect thereto.

4. The Escrow Agents shall disburse the Escrowed Funds as described in Paragraphs 4 and 4A of the Settlement Agreement.

5. The Escrow Agents shall not be liable for any action which they may in good faith take or refrain from taking in connection herewith, believed by them to be authorized or within the rights or powers conferred upon them by this Agreement. The Escrow Agents are not responsible or liable in any manner for the sufficiency, correctness, genuineness or validity of any of the agreements or documents existing between Wolfe and LRB. The Escrow Agents are authorized to act upon any document, request or notice which is believed by them in good faith to be genuine and signed or presented by the proper party or parties, and shall be protected in so acting. The Escrow Agents shall have no duties other than those expressly imposed upon them in this Agreement.

6. Either Escrow Agent may resign and be relieved of all further obligation hereunder upon providing evidence reasonably satisfactory to all other parties hereto that his duties will be assumed by a successor Joint Escrow Agent, who has agreed to be bound by all of the terms hereof.

7. The addresses of the parties signatory hereto are as follows:

Wolfe: David L. Wolfe  
7820 Sandy Shore Drive  
Hamlin, New York 14464

LRB: LRB Broadcasting, Limited Partnership  
c/o Robert J. & Linda R. Barrerra  
7 Irving Street  
Baldwin, New York 11510

Escrow Agents: J. Richard Carr, Esquire  
P.O. Box 70725  
Chevy Chase, Maryland 20813-0725

Arthur Belendiuk, Esquire  
Smithwick & Belendiuk, P.C.  
1990 M Street, NW, Suite 510  
Washington, DC 20036

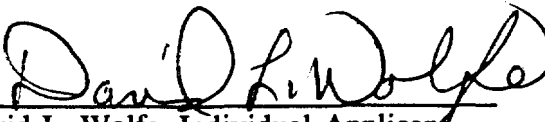
8. Each signatory to this Agreement warrants and represents that he has full authority to enter into, execute and carry out the terms of this Agreement.

9. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

10. This Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

11. This Agreement shall be construed under the laws of the State of New York.

IN WITNESS WHEREOF, the Parties hereto have executed this Escrow Agreement on the date first above written.

By:   
David L. Wolfe, Individual Applicant

LRB BROADCASTING, Limited  
Partnership

By: \_\_\_\_\_  
Robert J. Barrera, General Partner

By: \_\_\_\_\_  
Linda Barrera, General Partner

ESCROW AGENTS:

By: \_\_\_\_\_  
J. Richard Carr, Esquire

By: \_\_\_\_\_  
Arthur Belendiuk, Esquire



11. This Agreement shall be construed under the laws of the State of  
New York.

IN WITNESS WHEREOF, the Parties hereto have executed this Escrow  
Agreement on the date first above written.

By: \_\_\_\_\_  
David L. Wolfe, Individual Applicant

LRB BROADCASTING, Limited  
Partnership

By: Robert J. Barrera  
Robert J. Barrera, General Partner

By: Linda R. Barrera  
Linda Barrera, General Partner

ESCROW AGENTS:

By: \_\_\_\_\_  
J. Richard Carr, Esquire

By: Arthur V. Belendiuk  
Arthur Belendiuk, Esquire

11. This Agreement shall be construed under the laws of the State of New York.

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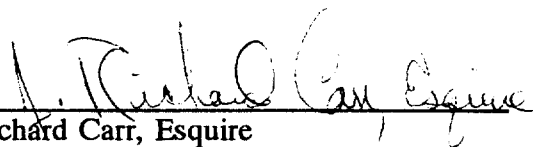
By: \_\_\_\_\_  
David L. Wolfe, Individual Applicant

LRB BROADCASTING, Limited  
Partnership

By: \_\_\_\_\_  
Robert J. Barrera, General Partner

By: \_\_\_\_\_  
Linda Barrera, General Partner

ESCROW AGENTS:

By:  \_\_\_\_\_  
J. Richard Carr, Esquire

By: \_\_\_\_\_  
Arthur Belendiuk, Esquire

**CERTIFICATE OF SERVICE**

I, Patricia A. Neil, a secretary in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 29th day of July, 1992, copies of the foregoing were mailed, first class, postage paid to the following:

The Honorable Richard L. Sippel\*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 214  
Washington, DC 20554

Norman Goldstein, Esquire\*  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Suite 7212  
Washington, DC 20554

J. Richard Carr, Esquire  
P.O. Box 70725  
Chevy Chase, MD 20813-0725  
Counsel for David Wolfe

  
Patricia A. Neil

\*By Hand